FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No.361/2007
(Vijaykumar Naidu Vs. Devendra Wasudeorao Naidu)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. A.D. Vyawahare, Adv. for the appellant.
Mr. V.V. Bhangde, Adv. for the respondent.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 20th September, 2007.

Heard.

The appellant is the original defendant. A suit was filed by the plaintiff against the defendant for possession of the suit property. It was the case of the plaintiff that the property had fallen to his share in view of the partition which was effected in the year 1973. Later on, the plaint was amended and it was pleaded in paragraph no.2 of the plaint that there was an oral partition in the year 1972 and the suit property fell to the share of the plaintiff. The plaintiff further pleaded that the defendant was occupying the suit premises as a licensee of the plaintiff.

The defendant denied the claim of the plaintiff and further denied that there was a partition of the joint family properties. It was denied that the properties were orally partitioned in

the year 1972 and a partition deed was executed in the year 1973. According to the defendant, the properties belonging to the joint family, were not partitioned and, therefore, plaintiff's suit was liable to be dismissed.

On the aforesaid pleadings of the parties, the trial Court framed the necessary issues and after considering the evidence tendered by the parties on record, held that the plaintiff failed to prove that the suit house was alloted to him in the partition. The trial Court held that the question as to whether the defendant was occupying the premises as a licensee, did not survive. The suit of the plaintiff was, therefore, dismissed. In an appeal filed by the plaintiff against the judgment passed by the trial Court on 1st September, 2004, first appellate Court reversed the finding recorded by the trial Court and held that the plaintiff had succeeded in proving that the suit property fell to the share of the plaintiff by virtue of oral partition, which was effected during the life time of the father of the plaintiff, G. Wasudeorao. The appellate Court further held that the trial Court was not justified in non-suiting the plaintiff merely on the ground that the partition deed of the year 1973 was not a registered document. The first appellate Court held that there was ample evidence on record to show that the properties were partitioned and the

members of the family were in possession of their respective shares, which they received in the partition of the year 1972. The first appellate Court held that the defendant was occupying the suit property as a licensee of the plaintiff. The first appellate Court, therefore, decreed the suit of the plaintiff.

It is submitted on behalf of the appellant that the first appellate Court was not justified in reversing the findings recorded by the trial Court specially when the partition deed executed in the year 1973, on which the plaintiff relied, was not registered and was, therefore, inadmissible in evidence. It was then canvassed on behalf of the appellant that the trial Court had rightly discarded the unregistered deed of the year 1973. According to the counsel for the appellant, the judgment passed by the first appellate Court was vitiated in view of the aforesaid fact.

I have perused the judgments passed by the trial and the appellate Courts. The trial Court has dismissed the suit of the plaintiff mainly on the ground that the partition deed of the year 1973 on which the plaintiff placed reliance, was not a registered document. The first appellate Court on a re-appreciation of the evidence tendered by the parties on record, came to a conclusion that there was voluminous evidence produced by the plaintiff

on record to show that the joint family property was already partitioned during the life time of the father of the plaintiff, and partition deed was executed in the year 1973, after the oral partition of the year 1972. The first appellate Court appreciated that the mother of the defendant and the other close relatives of the parties had clearly deposed that the house property was partitioned by G. Wasudeorao during his life time and all the three brothers were living separately in their portions after the oral partition in the year 1972. The first appellate Court rightly appreciated the mutation entries and the other documentary evidence, to hold that the plaintiff had proved that there was a partition of the suit property in the year 1972. The amended pleadings, in para 1, are not contradictory to the pleadings in paragraph 1 of the plaint. In any case, the amended pleadings and the pleadings in paragraph no.1 of the plaint are not totally inconsistent or self-contradictory. Since the plaintiff was able to prove by the other evidence on record that there was a partition of the the joint family property and the suit property fell to his share, the first appellate Court rightly reversed the findings recorded by the trial Court and granted a decree in favour of the plaintiff. It has been held by the Supreme Court in the judgment reported in **AIR 2002 SC 2526** that even though the partition deed

is inadmissible in evidence for want of registration, the other evidence on the plea of partition cannot be brushed aside merely because the partition deed is not registered. It has been laid down by the Supreme Court that if the parties have adduced evidence to prove the extent of their holdings, it is necessary for the Court to consider such evidence. In the instant case, though the partition deed was not a registered document, the voluminous oral and documentary evidence tendered by the plaintiff and the admission of the defendant in his cross-examination, clearly proved that there was a partition of the joint family property in the year 1972. The findings recorded by the first appellate Court cannot be found fault with.

The findings recorded by the first appellate Court are pure findings of facts which do not give rise to any substantial question of law.

Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP